

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 22.3.1996.

CRIMINAL APPEAL No. 94 of 1990.

to

CRIMINAL APPEAL No. 101 of 1990.

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BHIMJIBHAI MOTIBHAI

Mr.J.A.Shelat, A.P.P. for the State in all Appeals.

MR.Amit J.Shah, for Respondent No.1 in all Appeals.

CORAM : MR.JUSTICE M.H.KADRI
(22.3.1996.)

ORAL JUDGEMENT

Respondent - original accused is the owner of a Matador - a motor vehicle - bearing RTO Registration No.GUO 7869. For the breach of the provisions of the Motor Vehicles Act, 1939, committed by the accused on different dates, eight Criminal Cases No. 42651/89, 42652/89, 42271/89, 42272/89, 42273/89, 42274/89, 42275/89 and 42276/89, came to be registered against him before the learned Judicial Magistrate First Class, Traffic Court, Rajkot, for the offences punishable under section 42 read with section 124 of the Motor Vehicles Act, 1939 (for short "the Act"). The accused-respondent no.1 pleaded guilty to the charge in all the above criminal cases and thereupon the learned Magistrate convicted the accused and in all the cases, imposed a fine of Rs.25/- each. Brief facts of the prosecution case are as under :

2. Officers of the Motor Vehicles Department, pursuant to the check carried out from time to time, by virtue of the powers conferred upon them by the Act and the Rules framed thereunder, had issued checking memo in respect of the breach of the provisions of the Act and the Rules committed by the accused-respondent in connection with the motor vehicle No.GUO 7869 owned by him. On 8.8.1989, the accused-respondent had presented Criminal Misc. Application No. 52 of 1989 in the Court of the learned Magistrate (Traffic), Rajkot stating that several cases were pending against him before the Regional Transport Authority, Rajkot, in respect of motor vehicle No.GUO 7869, and therefore, orders may be passed calling for the said cases from the office of the Regional Transport Authority before the Court. After issuing notice and hearing the other side, the R.T.A. was directed to remain present before the Court with files of all pending cases against the respondent. The said order was passed on 28.8.1989. The R.T.A. had produced the checking reports in connection with the aforesaid vehicle before the learned Magistrate, who had taken cognizance of the same, and registered the abovementioned criminal cases against the accused. Thus,

without there being any complaint filed before the Court against the accused-respondent no.1, the learned Magistrate called upon the Regional Transport Authority to submit before him the copies of the checking memos issued to the accused-respondent, and thereupon, treating the R.T.A. as complainant, and taking cognizance of the matter, proceeded to record the plea of the accused-respondent.

3. The accused-respondent pleaded guilty to the charge, and thereupon the learned Magistrate (Traffic), Rajkot was pleased by his judgments and orders 25.8.89, to convict the accused in all the cases and impose upon him the fine of Rs.25/- each and in default to undergo S.I. for 5 days. Against the said judgments and orders of the learned Magistrate in the aforesaid Criminal Cases, the State has preferred the present Criminal Appeals No. 94 to 101 of 1990 respectively praying for enhancement of the sentence imposed by the learned Magistrate.

4. Heard Mr.J.A.Shelat, 1d.APP for the State and Mr.Amit J.Shah, 1d.Advocate for the Respondent No.1 -original accused. It is submitted by the 1d.APP that inspite of there being no complaint filed by the R.T.O., Rajkot, the learned Magistrate had treated the checking memos issued to the accused-respondent as complaints, had taken cognizance of the same and after recording the plea of the accused, had imposed only a meagre fine of Rs.25/- each on the accused in all the cases. He further argued that the procedure adopted by the learned Magistrate was against the provisions of law. The 1d.APP has drawn my attention to S.124 of the Act, which prescribes punishment for the first offence with a fine which may extent to Rs.200/-, and for the second or subsequent offences with fine which may extent to Rs.1,000/-.

5. In the Court of the learned Magistrate, as many as 8 criminal cases were registered against the accused-respondent for the contravention of the provisions of the Act, in respect of the same vehicle bearing RTO Registration No. GUO 7869. It is an admitted position that the accused-respondent was a habitual offender and had committed the same and similar offences under the Act very frequently. In this view of the matter, on conviction he was required to be inflicted some severe punishment. However, the learned Magistrate, without taking into consideration the offences committed by the accused-respondent repeatedly, had imposed the fine of Rs.25/- only, by accepting the plea of guilty, which appears to be clearly a case of plea bargaining.

6. Considering the seriousness and the frequency of the offences committed by the accused-respondent, I am of the view that the fine imposed by the learned Magistrate is too inadequate and disproportionate, and it requires to be enhanced, and all the appeals are required to be allowed accordingly.

7. In the result, Criminal Appeals No. 94/90 to 101/90 are partly allowed. The order of conviction passed by the learned Judicial Magistrate First Class (Traffic), Rajkot, in Criminal Cases No.42651/89, 42652/89, 42271/89, 42272/89, 42273/89, 42274/89, 42275/89 and 42276/89 is confirmed. However, the order of sentence is modified and the fine imposed is enhanced as under :

In Criminal Appeal No. 94.90, Respondent No.1 is ordered to pay a fine of Rs.250/- in place of Rs.25/- imposed by the ld.Magistrate, and in each of the remaining Criminal Appeals No. 95/90 to 101/90, Respondent No.1 is ordered to pay fine of Rs.750/- each in place of Rs.25/- each imposed by the ld. Magistrate. Thus, in all the above criminal cases, the appellant shall pay a total fine of Rs.5,500/- and the trial court shall adjust the amount of fine already paid by Respondent No.1 against the aforesaid amount of fine.

Respondent No.1 shall deposit the amount of fine within 15 days from the receipt of the writ of this order by the trial court. In default of payment of fine as ordered above, accused-respondent no.1 shall undergo S.I. for ONE MONTH in each case separately.

Office is directed to send the writ to the trial court immediately.
